

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

THEODORE STREATER §
v. § CIVIL ACTION NO. 9:11cv68
RICK THALER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Theodore Streater, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. As Defendants, Streater named TDCJ-CID Director Rick Thaler, TDCJ Executive Director Brad Livingston, Eastham Unit Warden Charles Bell, Major Craig Fisher, four unknown employees of the TDCJ Offender Telephone Services, and four unknown employees of Securus Correctional Billing Services.

Streater's complaint revolved around allegations that he was the victim of retaliation after filing a grievance complaining that his pre-paid prison phone account was being charged for dropped calls, and requesting a refund. He also indicated in an amended complaint that he had suffered retaliation as a result of the filing and pursuing of this lawsuit.

After an evidentiary hearing, the Magistrate Judge ordered the Defendants Bell and Thaler to answer the complaint. These defendants have answered and have filed a motion for summary judgment, to which Streater filed a response.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion for summary judgment be granted and that the lawsuit be dismissed. Streater received a copy of this Report on July 6, 2012, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings, testimony, and evidence in this cause, together with the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 46) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Defendants' motion for summary judgment (docket no. 40) is hereby GRANTED and the above-styled civil action is hereby DISMISSED with prejudice. It is further

ORDERED that the Court hereby declines supplemental jurisdiction over the Plaintiff's state-law claims, including any and all claims which he may have against Securus and its employees, and such claims are hereby DISMISSED with prejudice as to their refiling in federal court, but without prejudice as to their refiling in the courts of the State of Texas. It is further

ORDERED that the statute of limitations on Streater's state law claims is hereby TOLLED from the date that this lawsuit was originally filed until 30 days after the entry of final judgment in the case. 28 U.S.C. §1367(d). Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **12** day of **August, 2012**.



Ron Clark, United States District Judge